UB Law Forum

Volume 16
Number 1 *Fall 2003*

Article 29

10-1-2003

# What Good Is the Media?' Asks 2003 Mitchell Lecture

UB Law Forum


# 'What Good Is the Media?' asks 2003 Mitchell Lecture

In a changing media landscape – including technological progress, economic pressures and an evolving legal context – UB Law School's 2003 Mitchell Lecture asked the provocative question, "What Good Is the Media?"

In comments by keynote speaker C. Edwin Baker and a roundtable of distinguished commentators, the April 4 event answered with a simple affirmation: The best journalism continues to inform the workings of American democracy.

Just how that happens was the topic of Baker, who is Nicholas F. Gallicchio Professor of Law at the University of Pennsylvania Law School. The author of the new book *Media, Markets, and Democracy,* Baker systematically discussed the concept of freedom of the press – guaranteed, of course, by the First Amendment to the Constitution – and the evolving legal understandings of just whose freedom the First Amendment protects. The Constitution, he says, does not spell it out.

"The concept of press freedom would not even indicate whose autonomy ought to be protected," Baker said. "The press could be seen as free whether the law protects control by an owner or protects the right of working journalists, or maybe all the employees of the media outlet. The value of institutions, including the media, must lie in their contribution to human values. The value of the press lies in its contribution to democracy."

But how one understands democracy, he said, affects public-policy interpretations of what role the media should play in that system of governance. Baker outlined four theories of democracy, and laid out for each the implications of how legal scholars and public policy advocates see the media functioning in that system:

In an elite democracy, he said, "the claim is that the work of government is just too complicated for people to handle. Government must be and should be a matter of experts and technicians." Such an understanding, he said, stresses the need for a "watchdog" press, and legal treatment that ensures that government will not muzzle the watchdog.

A liberal pluralist democracy, Baker said, asserts that people have equal rights to "the goods, the policies, the outputs of government," in the same way that a free market is said to distribute private goods equally. This understanding, he said, assumes that "people's interests inherently conflict, and democracy handles these conflicts."

In this understanding of democracy, press freedom is construed to emphasize that groups "need their own partisan media to identify when their own interests are at stake and mobilize their membership," and the law should be concerned with ensuring ownership of media by diverse groups.

A (small-r) republican democracy argues that people often are concerned with the public good, not just their own self-interest. "However, the public good isn't self-defined," Baker said. "People need to find it and agree on it." A free press in such a system, he said, creates the ideal of an "inclusive, objective, civil and comprehensive public discourse." In a republican democracy, he said, the concentration of media ownership in the hands of a few corporate owners is not bad in itself – "it can even be advantageous as long as the media outlets act responsibly." This conception, he said, "fits perfectly with the recent movement in journalism toward public or civic journalism, where the press becomes a partner with the community in the search for common ground or common good."

Baker said he himself favors the complex democracy model, which combines elements of the republican and liberal pluralist approaches. In such a system, he said, interpretation of freedom of the press "becomes somewhat schizophrenic," because democracy "requires both partisan efforts at advancing group demands and also inclusive discussions of the public good."

"In our media-rich society," Baker said, "we have media that attempt to do

both. But for the complex democrat, the policy issue is premised on whether the market can be expected to undernourish or corrupt one of these efforts. To the extent that it does, the complex democrat would approve of intervention," such as laws restricting racist or sexist slurs, protecting individual privacy or requiring equal access for diverse political viewpoints.

Baker went on to argue that the increasing concentration of media ownership is a problem for American democracy and should be constrained by legal policy. "Media policy ought to be designed to put ownership of the media into the hands of people who are most likely to use these profits for quality journalism," he said. "Large corporate consolidated media owners are more oriented to take profits out as cash, as profits, and individually and locally owned media entities are more likely to invest these profits in journalism.

"And as many as possible separately owned and operated media entities responds to the participatory democratic aim of spreading widely and sharing, rather than concentrating, political power."

Baker's address was followed by response from three commentators: Cheryl A. Leanza, deputy director of the Media Access Project, a public-interest law firm that promotes open access and non-discrimination in electronic media; Gerald Goldberg, editorial page editor of *The Buffalo News;* and James Wittebols, a professor of communications studies at Niagara University and a regular contributor to WBFO-AM with his "Against the Grain" commentaries.

Leanza spoke at length about a proposal then before the Federal Communications Commission to relax the rules governing media ownership – for example, eliminating the rule that no company can own both a newspaper and a TV station in a local area. "This proceeding is going to consider the entire landscape of media ownership as we know it," she said. "This is not just a philosophical debate, this is something current that is happening in Washington."

Leanza also spoke about the application of First Amendment free-speech protections to the different types of media. "We have very different rules for the First Amendment depending on what type of media you are," she said. "If you are a newspaper, you have more protection under the First Amendment than if you are a cable system, and if you are a cable system you have more protection under the First Amendment from FCC regulation than you do if you are a broadcast entity. This goes to the lecture, and the question, what is the role of government in promoting democracy?"

Goldberg, speaking from his perspective as a veteran newspaper journalist, noted that cost pressures in recent years have led newspapers to cut staff. But he disputed the idea that ownership consolidation tends toward uniformity of viewpoints in newspapers.

**"The value of institutions, including the media, must lie in their contribution to human values. The value of the press lies in its contribution to democracy."**

**— C. Edwin Baker**

"There simply is no control from the top down of what you cover, how you cover it or what your editorials are," said Goldberg, who has worked for a Gannett paper as well as the *News*, owned by billionaire investor Warren Buffett. "Basically, good journalism is the best business, and people know if you are not giving them a true picture. Warren Buffett has never ever called my publisher or called me and said, 'I want you to say this about that.'

"I think the problems people raise with monopoly ownership are more in theory than in practice. I worked for two newspapers that were locally owned, and they were by far and away far less professional than the other two papers I have worked for. When you have a locally owned paper, you have one person in charge, and he is going to have friends in the community, friends in the business community, friends at the country club, and too often when just one person bears all that, that has an influence on what you say and what you write and where stories are placed. It is easier, if you have a large organization, to withstand that kind of pressure. Thank God for profit margin. That gives a newspaper its independence. You cannot be strong journalistically if you are not strong economically."

Wittebols, though, spoke to the ill effects of media consolidation on the quality of news coverage. That can be seen, he said, in the improved quality of international journalism compared with that in the United States. "The rest of the world's journalism is beating the pants off the American media," he said. "CBC is beating the U.S. electronic media on most of the breaking stories out of Iraq."

Wittebols noted that after each "wave" of media buyouts, in the mid-1980s and the mid-1990s, there were substantial layoffs in the news divisions immediately after those purchases. "The news divisions would immediately lay off 10 to 15 percent of their staffs," he said. "That speaks to the interests of owners who are not journalistically oriented. This inevitably leads to less staff available to go out and report the news, and has made news organizations more passivê, just waiting for the PR to come to them so they can play around with it a little bit and put a byline on it and make it look objective.

"We do not talk about the high price of the free market enough when it comes to media interests, and I think what has resulted in the last few years is what I would call a dumbed-down audience."

The Mitchell Lecture was endowed in 1950 by a gift from Lavinia A. Mitchell in memory of her husband, James McCormick Mitchell, an 1897 graduate of Buffalo Law School.